

Remarks:

Status of Claims

Claims 1-22 are currently pending in the present application. Claims 15-22 are new and claims 1, 7, 10, and 17 are independent.

Office Action

In the July 20, 2004, Office Action, the Examiner provisionally rejected claims 1-3 and 7-9 under either obviousness-type doubling patenting or statutory doubling patenting. The Examiner also rejected claims 10, 11, and 13 under 35 U.S.C. 102(e) as being anticipated by McCall (U.S. Pat. No. 6,459,990) and claims 12 and 14 under 35 U.S.C. 103(a) as being unpatentable over McCall in view of McMillian (U.S. Pat. No. 5,075,693). The Examiner appeared to reject claims 1-6 under 35 U.S.C. 103(a) as being unpatentable over McCall in view of McMillian (see page 5 of the July 20, 2004, Office Action). However, the analysis which corresponds to the rejections of claims 1-6 on page 5 appears to be directed at claims 12 and 14 as it duplicates the Examiner's comments regarding claims 12 and 14. Thus, applicant will assume that the rejections relating to claims 1-6 on page 5 of the July 20, 2004, Office Action are erroneously included therein as McCall or McMillian are not relevant or related to the features of claims 1-6. If applicant's understanding of the Examiner's intentions regarding claims 1-6 is incorrect, applicant respectfully requests a more detailed explanation.

Double Patenting Rejections

The Examiner provisionally rejected claims 1-3 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 30, 34, and 35 of copending Application No. 10/361,531 (the '051 application). The Examiner also provisionally rejected claims 7-9 under 35 U.S.C. 101 as claiming the same invention as claims 39, 44, and 45 of the '051 application.

Applicant respectfully submits that the Examiner has inadvertently failed to consider the most recent claims of the '051 application. Specifically, the double patenting rejections are based upon claims which were amended or canceled in applicant's February 17, 2004, amendment to the '051 application which was presented in response to a January

21, 2004, Office action. In a phone conversation on July 19, 2004, Examiner Beaulieu confirmed that the February 17, 2004, amendment was entered and that the '051 application was allowed on March 23, 2004.

Thus, claims 1-3 of the present application are distinct from allowed claims 30, 34, and 35 of the '051 application as claims 1-3 of the present invention do not include the "contemplated route" feature of claim 31. Similarly, claims 7-9 of the present application do not claim the same invention as claims 40 or 43 of the '051 application as claims 7-9 do not include the "contemplated route" feature of claim 40 or the stored elevation profile of claim 43. Therefore, applicant respectfully requests that the double patenting rejections be withdrawn.

The Rejection of Claims 10-14

Applicant respectfully submits that the Examiner's cited references and all other prior art of record, alone or in combination, fail to disclose or suggest all claimed features of claims 10-14. Specifically, claim 10 recites a processor for creating an elevation profile of changes in elevation between a first location and a second location. The elevation profile enables a user of the present invention to quickly and easily determine changes in elevation between two provided locations to assist in the planning of a route between the two locations or to facilitate other navigational functions.

McCall and McMillian fail to disclose or suggest this limitation. The Examiner has concluded that McCall discloses calculating an elevation profile based on the disclosures of column 3, lines 16-58. However, McCall, including column 3, clearly discloses and relates to an "inertial navigation system" operable to only provide "inertial positioning data" including "position, velocity, and attitude data" (column 3, lines 19-25). "Attitude" must be differentiated from "altitude" and elevation. "Attitude" is the orientation of an object's axes relative to a reference line or plane, such as the horizon (*The American Heritage Dictionary of the English Language, Fourth Edition*). "Altitude" is the height of an object above a reference level, such as sea level (*The American Heritage Dictionary of the English Language, Fourth Edition*). Similarly, altitude cannot be considered "inertial positioning data" as an object's elevation is completely unrelated to its inertia.

McCall's only disclosure or suggestion of any information which even remotely corresponds to elevation or altitude is the use of a known elevation to correct for measurement errors utilizing a Kalman filter (column 14, lines 2-45). The correction of measurement errors is not an elevation profile which indicates changes in elevation between a first location and a second location. Such a conclusion is consistent with the Examiner's own reasoning that McCall does not disclose an altimeter (Office Action page 4) as McCall lacks any means for determining any elevation or any elevation profile. Thus, McCall fails to disclose or suggest calculating an elevation profile as McCall is entirely directed at providing an accurate location of a device based on inertial positioning data, which does not include an elevation or an elevation profile, when GPS service is unreliable or unavailable (column 1, lines 50-55).

The Examiner's addition of the display and altimeter of McMillian does not remedy the inadequate disclosures of McCall as McMillian similarly fails to disclose or suggest calculating an elevation profile which indicates changes in elevation between a first location and a second location. Instead, McMillian discloses an "elevation map" in connection with a Kalman filter to filter inaccurate measurements from sensor data (column 10, lines 35-63). However, McMillian does not disclose or suggest utilizing the elevation map to indicate changes in elevation between a user-provided first location and a section location. Instead, McMillian is limited to providing only the current altitude of a vehicle (column 2, lines 40-50) and lacks any disclosure, suggestion, or means for indicating a change in elevation between a first location and a second location.

Conclusion

The Examiner's double patenting rejections of claims 1-3 and 7-9 should be withdrawn as the rejections are not based on the most recent claims presented in the '051 application. Additionally, the Examiner's cited references, McCall or McMillian fail to disclose or suggest all limitations of claims 10-14, such as "a processor for creating an elevation profile of changes in elevation between the first location and the second location." The Examiner's references entirely fail to disclose elevation information or merely disclose basic altitude or elevation information.

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Amendment dated September 1, 2004
Reply to Office action of July 20, 2004

In view of the remarks herein, applicant respectfully submits that claims 1-22 are in a condition for allowance. In the event of any questions, the Examiner is urged to call the undersigned. Any additional fee which might be due in connection with this application should be applied against Deposit Account No. 19-0522.

Respectfully Submitted,
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